

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

LUTHER MONTGOMERY,

Plaintiff,

vs.

JAMES STEWART, et al.,

Defendants.

CIV. ACT. NO. 1:24-cv-191-TFM-B

MEMORANDUM OPINION AND ORDER

On July 29, 2024, the Magistrate Judge entered a report and recommendation which recommends this action be dismissed with prejudice for failure to prosecute and to comply with the court's orders. *See* Doc. 6. No objections were filed.

Fed. R. Civ. P. 41(b) authorizes dismissal of a complaint for failure to prosecute or failure to comply with a court order or the federal rules. *Gratton v. Great Am. Commc'ns*, 178 F.3d 1373, 1374 (11th Cir. 1999). Further, such a dismissal may be done on motion of the defendant or *sua sponte* as an inherent power of the court. *Betty K Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333, 1337 (11th Cir. 2005). “[D]ismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” *Vil v. Perimeter Mortg. Funding Corp.*, 715 F. App'x 912, 915 (quoting *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989)). “[E]ven a non-lawyer should realize the peril to [his] case, when [he] . . . ignores numerous notices” and fails to comply with court orders. *Anthony v. Marion Cty. Gen. Hosp.*, 617 F.2d 1164, 1169 (5th Cir. 1980); *see also Moon*, 863 F.2d at 837 (As a general rule, where a litigant has been forewarned, dismissal for failure to obey a court order is not an abuse of discretion.). Therefore, the Court finds it appropriate to exercise its “inherent power” to “dismiss [Plaintiff's claims] *sua sponte* for

lack of prosecution.” *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962); *see also Betty K Agencies, Ltd.*, 432 F.3d at 1337 (describing the judicial power to dismiss *sua sponte* for failure to comply with court orders).

Additionally, the Court notes the issue of the shotgun pleading which provides the main basis for this dismissal (beyond the Rule 41(b) stated in the conclusion). Fed. R. Civ. P. 8 provides a complaint “must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Each allegation in the complaint “must be simple, concise, and direct.” FED. R. CIV. P. 8(d)(1). Fed. R. Civ. P. 10 provides that the complaint must “state [the plaintiff’s] claims . . . in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” FED. R. CIV. P. 10(b).

The purpose of [Rule 8(a)(2) and Rule 10(b)] is self-evident, to require the pleader to present his claims discretely and succinctly, so that [] his adversary can discern what he is claiming and frame a responsive pleading, the court can determine which facts support which claims and whether the plaintiff has stated any claims upon which relief can be granted, and, at trial, the court can determine that evidence which is relevant and that which is not.

Weiland v. Palm Beach Cnty. Sheriff’s Office, 792 F.3d 1313, 1320 (11th Cir. 2015) (quoting *T.D.S. Inc. v. Shelby Mut. Ins. Co.*, 760 F.2d 1520, 1544 n.14 (11th Cir. 1985) (Tjoflat, J., dissenting)); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (holding that the purpose of Fed. R. Civ. P. 8(a)(2) is to “give the defendant fair notice of what the claim is and the grounds upon which it rests.” (citation, internal quotation marks, and ellipsis omitted)).

“Complaints that violate either Rule 8(a)(2) or Rule 10(b), or both, are often disparagingly referred to as ‘shotgun pleadings,’” and have been uniformly rejected by the Eleventh Circuit. *Weiland*, 792 F.3d at 1320. “Shotgun pleadings violate Rule 8(a)(2)’s ‘short and plain statement’ requirement by ‘failing . . . to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.’” *McDonough v. City of Homestead*, 771 F. App’x 952,

955 (11th Cir. 2019) (quoting *Vibe Macro, Inc. v. Shabanets*, 878 F.3d 1291, 1294-95 (11th Cir. 2018)).¹ Put another way, it is “[t]he failure to identify claims with sufficient clarity to enable the defendant to frame a responsive pleading[.]” *Beckwith v. Bellsouth Telecomms. Inc.*, 146 F. App’x 368, 371 (11th Cir. 2005). There are four types of shotgun pleadings: (1) pleadings that “contain[] multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint;” (2) pleadings that are “guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action;” (3) pleadings that “commit[] the sin of not separating into a different count each cause of action or claim for relief;” and (4) pleadings that commit “the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.” *Weiland*, 792 F.3d at 1321.

Plaintiff’s amended complaint still falls into multiple types of shotgun pleading and serves as its own basis for dismissal with prejudice.

Finally, while briefly noted by the Report and Recommendation, Plaintiff is a familiar litigant in this Court and has been warned repeatedly about pleading standards. Therefore, the Court need not give him endless chances to file an amended complaint.

Accordingly, after due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objections filed, the Report and Recommendation of the Magistrate Judge is **ADOPTED** and this action is **DISMISSED with prejudice**.

¹ In this Circuit, “[u]npublished opinions are not considered binding precedent, but they may be cited as persuasive authority.” 11th Cir. R. 36-2 (effective Dec. 1, 2014); *see also Henry v. Comm’r of Soc. Sec.*, 802 F.3d 1264, 1267 n.1 (11th Cir. 2015) (per curiam) (“Cases printed in the Federal Appendix are cited as persuasive authority.”).

A separate judgment will issue pursuant to Fed. R. Civ. P. 58.

DONE and **ORDERED** this 29th day of October, 2024.

/s/Terry F. Moorer
TERRY F. MOORER
UNITED STATES DISTRICT JUDGE